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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/754,738

01/08/2004

Mark Spencer Chamberlain

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12/01/2006

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EXAMINER

RICCI, JOHN A

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/754,738

Applicant(s)

CHAMBERLAIN, MARK SPENCER

Examiner

John Ricci

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-11 and 15-17 is/are allowed.
- 6) ☒ Claim(s) 1-4, 12 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Upon further consideration, the indicated allowability of some claims has been withdrawn.

* * * * *

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 & 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Mabuchi 3,940,882.

Mabuchi shows a flying wing toy 3, 4 having a propeller 6 powered by motor 11; a motor enclosure 1 that "form fits" to the motor; the enclosure 1 having a "smooth, streamlined, featureless" top surface between the wing 3, 4 and propeller 6. The motor enclosure extends a substantial distance to the rear of wings 3, 4, which would be adequate to decouple trailing edge air turbulence from the propeller; the claimed functional language does not define structure beyond that shown by Mabuchi.

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Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Jones 1,576,913.

Jones shows a flying toy including parts A, 6, 7, 12, 13 which together define an "airfoil", with no fuselage, and a propulsion system 22, 23 on the airfoil, including propellers 20, 21 extending aft of the trailing edge of the airfoil. It is not clear what is an adequate distance to "decouple the propeller from turbulence ... at the trailing edge of the airfoil"; this does not define structure beyond that shown by Jones.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 19 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Mabuchi 3,940,882.

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The propulsion system of Jones includes rubber bands, which may not be sufficient to power the toy for very long. One would recognize that an electric motor would be desirable to power the propeller. For example, Mabuchi shows that a flying toy may include a motor 11 and battery 17 in a bay, with access on an underside of the airfoil. This would be desirable with the toy of Jones to power the toy for a longer time. It would have been obvious to one of ordinary skill in the art to provide the toy of Jones with a motor and battery, as suggested by Mabuchi.

* * * * *

Claims 5-11 & 15-17 are allowed.

Claims 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

* * * * *

This letter was prepared by Examiner John Ricci, who can be reached at:

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Voice: 571-272-4429

Fax: Use 571-273-8300 for papers to be delivered directly to the mail room, like formal amendments and responses, change of address, power of attorney, petitions.

Use 703-783-0439 for papers to be delivered directly to the Examiner, like informal or proposed responses for discussion, or notes in preparation for an interview.

Response by Fax is encouraged to reduce mail processing time. Please don't send duplicate papers by mail and Fax.

PTO main switchboard: 800-786-9199.

Visit our Web site at www.uspto.gov.



**JOHN RICCI
PRIMARY EXAMINER
ART UNIT 3711**